Supreme Court, U. S.
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IN THE

Supreme Court of the United States

..... Term, 1974

No. 73-1425

COMMONWEALTH OF PENNSYLVANIA,
Petitioner,

vs.

PETER ERLING PLATOU,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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IN THE

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..... Term, 1974

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COMMONWEALTH OF PENNSYLVANIA,
Petitioner,

vs.

PETER ERLING PLATOU,
Respondent.

_____

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

_____

The Petitioner, the Commonwealth of Pennsylvania, prays that a Writ of Certiorari Issue to review the Judgment of the Supreme Court of Pennsylvania entered in the above case on November 26, 1973, which reversed the Superior Court of Pennsylvania which had affirmed the guilty verdict of the Court of Common Pleas of Crawford County, Criminal Division.

Opinions Below

Respondent, Platou, was adjudged guilty by the Court of Common Pleas of Crawford County, Criminal Division, No. 48 May Sessions, 1970. The Superior Court of Pennsylvania affirmed in a *Per Curiam* opinionless order. *Commonwealth v. Platou*, 220 Pa. Super. 779, 286 A. 2d 402 (1972). The Supreme Court of Pennsylvania reversed and granted a new trial on November 26, 1973. This opinion is not yet reported. (See Appendix.)

Jurisdiction

The Jurisdiction of this Court is invoked under 28 U. S. C. A. 1257 (3).

Questions Presented

When a search of an apartment is conducted under the authority of a search warrant which is applicable to the apartment, and evidence is found in personal property belonging to a guest of the apartment leasee, has the guest's U. S. Constitution Fourth Amendment rights been violated when such evidence is used against him in a criminal action?

U. S. Constitutional Provision Involved

Amendment IV. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Statement

Respondent Platou was a guest at the apartment of Robert Wander on March 3, 1970. A valid search warrant was issued authorizing officers to search the premises of Wander at 731 Park Avenue, Apt. 3, Meadville, Pennsylvania. In connection with the search of Wander's apartment the police found marijuana in one of Platou's suitcases.

Platou was arrested and charged with possession of marijuana. Platou filed a Motion to Suppress the marijuana on the basis that the search of his suitcase was illegal. After a hearing, the Motion to Suppress was denied.

Platou waived jury trial and was found guilty by the Court of Common Pleas, Criminal Division, of Crawford County, Pennsylvania.

Reasons for Granting the Writ

The Petitioner advances the following reasons why this Honorable Court should grant a Writ of Certiorari:

1. The Supreme Court has never dealt with the issue presented in this case directly and the matter is right for decision.

2. The various Circuit Court of Appeals are divided on this particular issue.

3. This presents a unique factual situation in that lower courts as well as police officers should understand their rights and privileges in executing the mandates of a search warrant and under the present holding would require the police officers to determine title to the suitcase or other items allegedly owned by a guest. In addition, it would be

easy for any guest to claim ownership of anything in the apartment for the purpose of avoiding a search and seizure of the tenant's belongings.

4. The courts of the Commonwealth of Pennsylvania are divided in that the Superior Court affirmed the court but the Supreme Court did not.

Respectfully submitted,

PAUL D. SHAFER, JR.,
District Attorney,
Attorney for Petitioner,
Crawford County,
Meadville, Pennsylvania 16335.

February 25, 1974.

APPENDIX

IN THE

SUPREME COURT OF PENNSYLVANIA

WESTERN DISTRICT

No. 27 March Term, 1973

COMMONWEALTH OF PENNSYLVANIA,

v.

PETER ERLING PLATOU,

Appellant.

APPEAL FROM ORDER OF THE SUPERIOR COURT, No. 53 APRIL TERM, 1971, AFFIRMING THE JUDGMENT OF SENTENCE OF THE COURT OF COMMON PLEAS OF CRAWFORD COUNTY, CRIMINAL DIVISION, No. 48 MAY SESSIONS, 1970.

Opinion of the Court

ROBERTS, *J.* Filed: November 26, 1973

Appellant Peter E. Platou was convicted of possession of marijuana[1] and sentenced to serve two years probation and to pay a $500 fine. He moved before trial to suppress the marijuana seized from his effects. After the denial of his

[1] The Drug, Device and Cosmetic Act, Act of September 26, 1961, P.L. 1664, § 4, 35 P.S. § 780-4, as amended, The Controlled Substance, Drug, Device and Cosmetic Act, Act of April 14, 1972, P.L. _____, No. 64, §§ 1-44, 35 P.S. §§ 780-101 to -144 (Supp. 1973).

motion, appellant was tried nonjury. At trial the challenged evidence was introduced over objection. Appellant was adjudged guilty, and the Superior Court affirmed in a per curiam opinionless order. *Commonwealth v. Platou*, 220 Pa. 779, 286 A.2d 402 (1972). We granted allocatur to consider whether the seizure of marijuana from appellant violated his right to be free from unreasonable searches and seizures.[2] We hold it did. We reverse and grant a new trial.

At the time of the search appellant was a guest in the apartment of his friend, Robert Wander. On the basis of a sale of marijuana by Wander to a police agent, an arrest warrant for him and a search warrant for his premises were obtained. The police arrested Wander at his place of work and accompanied by him proceeded to his apartment. At this time, the police had no knowledge of appellant's existence. Approaching the apartment, Wander informed the police that he had a friend visting him. When the police arrived they read the warrant to Wander and entered. Although it is unclear exactly what next transpired, the record does establish that the police announced they had authority to search everything in the apartment and that appellant claimed the two suitcases lying on the floor of Wander's apartment were his.[3] Despite being on notice that the suitcases did not belong to Wander, the police began searching them simultaneously with their initiating

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[2] U. S. Const., amend. IV; Pa. Const. art. I, § 8. Our discussion of the Fourth Amendment is also applicable to the state constitutional provision.

[3] One of appellant's suitcases was open, the other closed. For the purpose of our analysis, this makes no difference.

a search of the apartment. In one of appellant's suitcases they found a single ounce of marijuana.[4]

The Commonwealth attempts to justify its search of appellant's suitcases solely on the ground that it was authorized by a valid warrant.[5] It argues that because the suitcases were separated from appellant's person and located within Wander's apartment, they were properly searched. We disagree.

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[4] In the midst of searching appellant's suitcases, one of the searching officers admonished appellant that "[i]f there's Marijuana in here we are going to find it and you might as well tell us where it is." Transcript of Suppression Hearing at 7 (Apr. 30, 1970). Appellant complied and it was then that the single ounce of marijuana was discovered. The "burden [of proving consent] cannot be discharged by showing no more than acquiescence to a claim of unlawful authority." *Bumper v. North Carolina*, 391 U.S. 543, 548-49, 88 S. Ct. 1788, 1792 (1968); *Commonwealth v. Harris*, 429 Pa. 215, 221, 239 A.2d 290, 293 (1968). The Commonwealth has not attempted to justify the search as consensual, and could not prevail if it did.

[5] If the search of appellant's suitcases was not authorized by the search warrant for Wander's apartment, the Commonwealth would have had to prove that an exception to the Fourth Amendment warrant requirement existed to justify the warrantless search. It must be remembered that all warrantless searches are *per se* unreasonable absent exigent circumstances. *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968); *Commonwealth v. Cockfield*, 431 Pa. 639, 246 A.2d 381 (1968). Because no probable cause existed to arrest appellant prior to the search of his suitcases, the search cannot be considered as incident to a valid arrest. *Commonwealth v. Reece*, 437 Pa. 422, 263 A.2d 463 (1970). In any event, appellant's suitcases were beyond the area of his control where he could possibly utilize a hidden weapon, and therefore the search of his suitcases, the search cannot be considered as incident officer's protection. *Chimel v. California*, 395 U.S. 752, 89 S. Ct. 2034 (1969). The single ounce of marijuana, although found in the opened suitcase, was inside a shoe which in turn was inside a shoe sock. It was not in plain view. See *Coolidge v. New Hampshire*, 403 U.S. 443, 464-73, 91 S. Ct. 2022, 2037-42 (1971); *Harris v. United States*, 390 U.S. 234, 88 S. Ct. 992 (1968); *Ker v. California*, 374 U.S. 23, 43, 83 S. Ct. 1623, 1635 (1963). Consent is not here at issue. See note 4, *supra*.

The search of appellant's suitcases under the authority of the search warrant for Wander's apartment is analagous to those situations in which consent searches have been invalidated because the place or thing searched was in the exclusive control or possession of a non-consenting party, and the consenting party did not have "an independent right of his own to consent to the seizure. . . ." *Commonwealth v. Storck*, 442 Pa. 197, 200, 275 A.2d 362, 364 (1971); see *Cunningham v. Heinze*, 352 F.2d 1, 4-5 (9th Cir. 1965), cert. denied, 384 U.S. 968, 86 S. Ct. 1274 (1966); *Reeves v. Warden*, 346 F.2d 915 (4th Cir. 1965); *Holzhey v. United States*, 223 F.2d 823 (5th Cir. 1955); *United States v. Blok*, 188 F.2d 1019 (D.C. Cir. 1951); *United States v. Poole*, 307 F. Supp. 1185 (E.D. La. 1969); *cf. Frazier v. Cupp*, 394 U.S. 731, 740, 89 S. Ct. 1420, 1425 (1969). It is controlled by the same rationale. The reasoning of these "consent" search cases is that a person cannot waive the Fourth Amendment rights of another with respect to property owned or possessed by that other person.

Like consent, a warrant fulfills the Fourth Amendment requirement that searches be reasonable. But a warrant can only authorize a search of the place or thing for which an affidavit[6] containing facts constituting probable cause has been submitted. If a warrant permits the search of premises or effects of a particular person, as here, then it cannot be extended by the officer executing the warrant to include a search of things not belonging to or under the control of that person. In the instant case, it is undisputed

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[6] Probable cause for a search warrant may be supported by sworn oral testimony. *Commonwealth v. Milliken*, 450 Pa. 310, 300 A.2d 78 (1973); Pa. R. Crim. P. 2003.

that Wander had no control over appellant's effects. Moreover, the police before undertaking their search were on notice that the suitcases belonged to appellant, and not Wander. The property of appellant cannot be searched under the authority of a warrant for the premises of Wander. If it could, appellant would not be afforded his Fourth Amendment guarantee with respect to his property, because no magistrate ever decided that probable cause existed for the search of his effects.[7]

To hold that the serach of appellant's suitcases was authorized by the search warrant for Wander's apartment would offend the Fourth Amendment's directive that "no Warrants shall issue, but upon probable cause . . . particularly describing the place to be searched, and the persons or things to be seized."[8] The police had no knowledge of the existence of appellant, or of his property, prior to the time they entered Wander's apartment. A fortiori, neither did the issuing magistrate. The warrant therefore could not possibly have described appellant's effects. If the officer executing the warrant, by his own choice, could extend its reach by searching things not particularly described therein, the constitutional prescription of particularity would be violated.

> "The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of

[7] The Commonwealth does not contend, as indeed it could not, that the search was reasonable because justified by an exception to the Fourth Amendment warrant requirement. See note 5, *supra*.

[8] The Pennsylvania Constitution similarly provides that "no warrants to search any place or to seize any person or things shall issue without describing them as nearly as may be . . ." Pa. Const. art. I, § 8.

> one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant."

Marron v. United States, 275 U.S. 192, 196, 48 S. Ct. 74, 76 (1927); see *Stanford v. Texas*, 379 U.S. 476, 85 S. Ct. 506 (1965); *Boyd v. United States*, 116 U.S. 616, 6 S. Ct. 524 (1886); *Commonwealth v. Matthews*, 446 Pa. 65, 72-74, 285 A.2d 510, 513-14 (1971).

Our determination here is in accord with *Commonwealth v. Reece*, 437 Pa. 422, 263 A.2d 463 (1970). There, this Court held that police, validly within an apartment under the authority of a search warrant, unconstitutionally searched persons who happened to be on the premises and about whom the police had no information suggesting involvement in criminal activity. Implicit in *Reece* was this Court's refusal to sanction the right of an officer executing a search warrant to extend its scope to cover persons or things not particularly described in the warrant. Our conclusion is consistent with the reasoning in *United States v. Di Re*, 332 U.S. 581, 68 S. Ct. 222 (1948),[9] and with the result reached in other jurisidictions.[10]

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[9] In *United States v. Di Re*, 332 U.S. 581, 68 S. Ct. 222 (1948), Di Re was convicted of knowingly possessing counterfeit gasoline ration coupons on the basis of evidence seized from him. Federal officials, acting on an informer's tip, stopped an automobile in which Di Re was a passenger and without a warrant searched him. The government defended its search on the ground, *inter alia*, that incident to a warrantless search of an automobile, all occupants justifiably could be searched. The Court found that no search of the car took place and so avoided deciding whether an automobile because of its mobile nature could be searched without a warrant more readily than other property. It did, however, address the question whether a right to search an automobile without a warrant conferred an incidental right to search all of its occupants.

(Footnote continued on following page)

The facts of *Reece* are strikingly akin to those of the instant case. There the police, acting on an informant's tip, obtained a search warrant for an apartment where a

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(Footnote continued from preceding page)

"The Government says it would not contend that, armed with a search warrant for a residence only, it could search all persons found in it. But an occupant of a house could be used to conceal this contraband on his person quite as readily as can an occupant of a car. Necessity, an argument advanced in support of this search, would seem as strong a reason for searching guests of a house for which a search warrant had issued as for search of guests in a car for which none had been issued. By a parity of reasoning with that on which the Government disclaims the right to search occupants of a house we suppose the Government would not contend that if it had a valid search warrant for the car only it could search the occupants as an incident to its execution. How then could we say that the right to search a car without a warrant confers greater latitude to search occupants than a search would permit?"

Id. at 587 68 S. Ct. at 225.

[10] *United States v. Poole*, 307 F. Supp. 1185, 1190-91 (E.D. La. 1969); *United States v. Haywood*, 284 F. Supp. 245, 250 (E.D. La. 1968); *United States v. Festa*, 192 F. Supp. 160, 163 (D. Mass. 1960) (Wyzanski, J.); *State v. Wise*, 284 A.2d 292 (Del. Super. 1971); *Jones v. State*, 126 Ga. App. 841, 192 S. E.2d 171 (1972); *Purkey v. Mabey*, 33 Idaho 281, 193 P. 79 (1920); *State v. Bradbury*, 109 N.H. 105, 243 A.2d 302 (1968); *State v. Fox*, 283 Minn. 176, 168 N.W.2d 260 (1969); *People v. Smith*, 21 N.Y.2d 698, 234 N.E.2d 460, 287 N.Y.S.2d 425 (1967) (*per curiam*); *Crossland v. State*, 266 P.2d 649 (Okla. Crim. App. 1954); *State v. Carufel*, 263 A.2d 686 (R.I. 1970); *State v. Massie*, 95 W. Va. 233, 120 S.E. 514 (1923). *Cf. Griffin v. State*, 232 Md. 389, 194 A.2d 80 (1963) (warrant authorizing police to search all persons on premises construed to allow police to search only those they witness committing a crime); *Webster v. State*, 6 Md. App. 163, 250 A.2d 279 (1969) (*per curiam*). See generally Note, 58 Cornell L. Rev. 614 (1973). But see *United States v. Johnson*, 475 F.2d 977 (D.C. Cir. 1973); *State v. Procco*, 5 Conn. Cir. 637, 260 A.2d 413 (1969); *Willis v. State*, 122 Ga. App. 455, 177 S.E.2d 487 (1970); *Samuel v. State*, 222 So.2d 3 (Fla. 1969); *State v. Pugh*, 69 Ill. App.2d 312, 217 N.E.2d 557 (1966); *State v. Loudermilk*, 208 Kan. 893, 494 P.2d 1174 (1972); *State v. DeSimone*, 60 N.J. 319, 288 A.2d 849 (1972) (automobile search); *Johnson v. State*, 440 S.W.2d 308 (Tex. Crim. App. 1969).

"pot" party was supposedly going to be held. As persons entered the apartment, the police searched them. Those found with narcotics were arrested. In both *Reece* and the present case, the police had no information about the visitors; no indicia existed to suggest criminal activity; the crime charged was possession of marijuana, "a crime [which] by its very nature is unique to the individual." *Reece*, *supra* at 427, 263 A.2d at 466. In both guilt by association was the sole rationale for the search and subsequent arrest. See *Sibron v. New York*, 392 U.S. 40, 62-66, 88 S. Ct. 1889, 1902-04 (1968). While recognizing the applicability of *Reece* to the present case, the Commonwealth has attempted to distinguish it. The only factual distinction is that the search in *Reece* was of the guest's person, and here the search was of the guest's effects. There is no constitutional difference.

The Fourth Amendment guarantees that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ."[11] A person does not lose the protection of the Fourth Amendment by entering the apartment of a friend. *Katz v. United States*, 389 U.S. 347, 352, 88 S. Ct. 507, 511 (1967); *Jones v. United States*, 362 U. S. 257, 261-67, 80 S. Ct. 725, 731-34 (1960); *Reece*, *supra*. Neither do a person's effects. The Fourth Amendment permits no lesser protection for a person's effects, than for his person. So long as a person seeks to preserve

[11] The wording of article I, section 8 of the Pennsylvania Constitution is only slightly different. "The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures . . . ."

his effects as private, even if they are accessible to the public or to others, they are constitutionally protected. *Katz, supra* at 351, 88 S. Ct. at 511. Stated differently, a person must maintain the privacy of his possessions in such a fashion that his "expectations of freedom from intrusion are recognized as reasonable." *Id.* at 361, 88 S. Ct. at 517 (Harlan, J., concurring). Personal belongings brought by their owner on a visit to a friend's house retain their constitutional protection until their owner meaningfully abdicates control or responsibility. Appellant's placing his suitcases on the floor of Wander's apartment and opening one of them does not amount to an abandonment of his control. Appellant maintained his reasonable expectation of privacy. And therefore the search of his suitcases was unreasonable and constitutionally impermissible.

The order of the Superior Court is reversed. The judgment of sentence of the Court of Common Pleas of Crawford County is reversed and the case is remanded for a new trial.

Mr. Chief Justice Jones dissents.

Record in the Superior Court of Pennsylvania

IN THE

SUPERIOR COURT OF PENNSYLVANIA

SITTING AT PITTSBURGH

No. 53 APRIL TERM, 1971

COMMONWEALTH OF PENNSYLVANIA,

v.

PETER ERLING PLATOU,

Appellant.

RECORD

APPEAL FROM THE SENTENCE OF THE COURT OF COMMON PLEAS, CRIMINAL DIVISION, OF CRAWFORD COUNTY, PENNSYLVANIA AT NO. 48 MAY SESSIONS, 1970.

ROBERT G. GEESEMAN,
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Attorneys for Appellant.

3170 One Oliver Plaza,
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(412) 391-6625.

Record in the Superior Court of Pennsylvania

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Record in the Superior Court of Pennsylvania
Stipulation of Counsel

IN THE
SUPERIOR COURT OF PENNSYLVANIA
SITTING AT PITTSBURGH

No. 53 April Term, 1971.

COMMONWEALTH OF PENNSYLVANIA,
v.
PETER ERLING PLATOU,
Appellant.

APPEAL FROM THE SENTENCE OF THE COURT OF COMMON PLEAS, CRIMINAL DIVISION, OF THE COUNTY OF CRAWFORD, NO. 48 MAY SESSIONS, 1970.

Stipulation of Counsel

AND NOW, September 1, 1971 pursuant to Rule 37 of the Superior Court of Pennsylvania, G. Harold Blaxter, attorney for Appellant and Paul D. Shafer, Jr., District Attorney, Crawford County, attorney for Appellee, agree that the questions presented on this appeal can be determined without an examination of all the pleadings and evidence and agree that the facts necessary for this determination are well and truly stated in the first six paragraphs of the Opinion and Order *Sur* Motion for New Trial and In Arrest of Judgment by F. Joseph Thomas, J. and therefore stipulate that the Record of this case on appeal shall consist only of this stipulation, a listing of the relevant docket entries, the said Opinion and Order of Judge F. Joseph Thomas and the Judgment of Sentence.

(signed) G. HAROLD BLAXTER,

(signed) PAUL D. SHAFER, JR.

Record in the Superior Court of Pennsylvania
Relevant Docket Entries

Relevant Docket Entries

March 30, 1970, Complaint filed.

April 15, 1970, Application to Suppress Evidence filed.

April 24, 1970, Answer to Application to Suppress Evidence filed.

April 28, 1970, Indictment approved by Grand Jury.

May 19, 1970, Opinion and Order—*Sur* Application to Suppress Evidence filed.

May 25, 1970, Waiver of Jury Trial filed.

May 27, 1970, Verdict—Non-Jury Trial, filed.

May 28, 1970, Motion for New Trial and In Arrest of Judgment filed.

June 8, 1970, Motion for Setting above case for Argument filed.

August 24, 1970, Opinion and Order—*Sur* Motion for New Trial and In Arrest of Judgment filed.

August 24, 1970, Transcript of Suppression Hearing filed.

October 14, 1970, Sentence filed.

October 16, 1970, Request for Special Probation/Parole Supervision filed.

October 23, 1970, Certiorari from Superior Court filed.

October 27, 1970, Notice of Appeal and Acceptance of Service filed.

November 30, 1970, Notice of Filing Transcript filed.

November 30, 1970, Transcript of Trial Testimony filed.

Record in the Superior Court of Pennsylvania
Opinion

Opinion and Order

***Sur* Motion for New Trial and in Arrest of Judgment**

IN THE

COURT OF COMMON PLEAS

OF CRAWFORD COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

No. 48 May Sessions, 1970.

COMMONWEALTH OF PENNSYLVANIA,

vs.

PETER ERLING PLATOU.

Paul D. Shafer, Jr., Esquire, District Attorney, for the Commonwealth.

Gordon R. Miller, Esquire, Attorney for the Defendant.

Before P. Richard Thomas, P. J. and F. Joseph Thomas, J., *En Banc:*

F. JOSEPH THOMAS, *J.*

The facts necessary for a determination of the issues now before us on defendant's post-trial motions are admitted or not denied.

On March 3, 1970, a valid search warrant was issued by a District Justice of the Peace authorizing police officers to search the premises of one Robert Wander at "731 Park

Avenue, Apt. 3, Meadville, Pa." The property to be seized, as described in the search warrant, included marijuana.

The officers arrested Wander at his place of business and took him to the apartment described in the search warrant. Upon arriving there, the officers found the defendant, a friend and guest of Wander, lying on or just getting up from a mattress in the kitchen. Apparently the door leading into the apartment opened into the kitchen. The search warrant was read to Wander in the defendant's presence. At that time, there were two (2) suitcases on the floor of the kitchen without markings, labels or other identification or indication of ownership. One suitcase was lying open and both were unlocked. One of the officers, Chief of Police Holt, announced that the officers were going to search everything in the apartment, including "all bags that were found" in said apartment. At that point the defendant said that the suitcases were his, which information was either volunteered or given in response to a question by State Police Officer Ford as to ownership.

Officer Ford then proceeded to search the open suitcase and, while doing so, said to Platou in substance: "If there is anything in here you might as well tell us now. We'll find it." The defendant then said, according to Chief Holt: "If you are going to search the suitcases and everything in the house, I might as well tell you. I got some marijuana. It's in the shoe." Officer Ford did, in fact, find marijuana in the shoe indicated by the defendant in the open suitcase. At this point, the defendant was advised of his *Miranda* rights but nevertheless told the officers that he "got the marijuana from a friend down in New Orleans."

The defendant was placed under arrest and charged with possession of marijuana. Defense counsel filed a motion to suppress the marijuana and the finding thereof on the ground that the search of the defendant's suitcases and the subsequent seizure of the marijuana were illegal. After a hearing in which the facts, with minor exceptions, were agreed upon, the motion to suppress was denied.

The defendant then waived jury trial and was found guilty by the Court after a trial without a jury in which the facts above summarized were established by competent evidence. The defendant did not testify or offer any evidence at said trial.

The defendant does not and could not successfully attack the validity of the search warrant. His post-trial motions are based upon the same argument advanced at the hearing on the motion to suppress. This argument is that the police had no right to search the suitcases on the premises after the defendant had identified them as belonging to him and, therefore, the seizure resulting from said search was invalid. In support of this argument, defense counsel urgently insists that, under the circumstances here present, the officers were required either to accept the defendant's statement of ownership and forego searching the suitcases or search at the risk that what was found could not be used as evidence if the defendant's statement of ownership subsequently proved true. We disagree and reaffirm our ruling on the application to suppress the evidence.

We have not found nor has our attention been called to any cases in the Supreme Court of the United States or of this Commonwealth in which precisely the same issue upon the same facts was involved. However, in our opinion, the

principles enunciated upon similar facts and issues govern this case. A summary of some of these principles are signposts clearly leading to the result which we reach in this case.

As Justice HARLAN, speaking for the Court, stated in *Simmons v. United States*, 390 U.S. 377, 393, 88 S.Ct. 967, 976, (1968): "Search-and-seizure claims depend heavily upon their individual facts" and "the law of search and seizure is in a state of flux." Thus, any solution to a search and seizure problem requires a continuing awareness of the concept of the "reasonableness" of a search as it is interpreted and reinterpreted by the Appellate Courts because it is now hornbook law that the Fourth Amendment prohibits *only* "unreasonable searches and seizures".

The determination of "reasonableness" under the existing interpretation thereof consists of balancing the individual's right of privacy with the necessity of invading that privacy to solve crimes and enforce the law. Even before *Katz v. United States*, 389 U.S. 347, 88 S.Ct. 507 (1967), there were numerous cases which recognized the privacy aspect of the proscription against unreasonable searches and seizures although the emphasis was on the protection of property. *Katz* left no doubt that the Fourth Amendment protects persons and not places. *Chimel v. California*, 395 U.S. 752, 89 S.Ct. 2034, 2039 (1969), sums up this "reasoned view of the background and purpose of the Fourth Amendment" by quoting an earlier case with approval:

> "As the Court put it in McDonald v. United States, 335 U.S. 451, 69 S.Ct. 191, 93 L.Ed. 153:

'"We are not dealing with formalities. The presence of a search warrant serves a high function. Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police. *This was done not to shield criminals nor to make the home a safe haven for illegal activities. It was done so that an objective mind might weigh the need to invade that privacy in order to enforce the law. . . .*"'" (Emphasis supplied)

Chimel concedes that "the recurring question of the reasonableness of searches depends upon the facts and circumstances—the toal atmosphere of the case." However, in order to have a criterion of reason rather than an unconfined subjective analysis, *Chimel* requires that "those facts and circumstances must be viewed in the light of established Fourth Amendment principles." (Page 2041).

In so weighing the right of privacy against the government's duty to enforce the law, and to protect the officers performing that duty, the Supreme Court has consistently held that a search without a warrant is unreasonable, even though there is probable cause to search, except in a few specifically established and well delineated situations where the exigencies of law enforcement make that course imperative. *Vale v. Louisiana*, 38 LW 4544. Only where required to enforce the law, and protect authorized officers performing that duty, has the Court permitted invasions of privacy by searches without a warrant and then only to the extent necessary to accomplish those purposes. Thus, a search incident to lawful arrest inside a house is permitted but is confined to a search of the arrestee's person and the area "from within which he might gain possession

of a weapon or destructible evidence." *Chimel v. California, supra.* Other instances where such invasions of privacy have been permitted by warrantless searches of dwellings are summarized in *Vale v. Louisiana, supra,* as follows (Page 4545):

> ". . .our past decisions make clear that only in '"a few specifically established and well-delineated"' situations, *Katz v. United States,* 389 U.S. 347, 357, may a warrantless search of a dwelling withstand constitutional scrutiny, even though the authorities have probable cause to conduct it. The burden rests on the State to show the existence of such an exceptional situation. *Chimel v. California, supra,* at 762; *United States v. Jeffers,* 342 U.S. 48, 51; *McDonald v. United States,* 335 U.S. 451, 456. And the record before us discloses none.
>
> "There is no suggestion that anyone consented to the search Cf. *Zap v. United States,* 328 U.S. 624, 628. The officers were not responding to an emergency. *United States v. Jeffers, supra,* at 52; *McDonald v. United States, supra,* at 454. They were not in hot pursuit of a fleeing felon. *Warden v. Hayden,* 387 U.S. 294, 298-299; *Chapman v. United States,* 365 U.S. 610, 615; *Johnson v. United States,* 333 U.S. 10, 15. The goods ultimately seized were not in the process of destruction. *Schmerber v. California,* 384 U. S. 757, 770-771; *United States v. Jeffers, supra; McDonald v. United States, supra,* at 455. Nor were they about to be removed from the jurisdiction. *Chapman v. United States, supra; Johnson v. United States, supra; United States v. Jeffers, supra.*"

For the same reason, automobiles and other mobile vehicles may be searched without warrant where a competent official authorized to search has probable cause for

believing that the vehicle is carrying contraband or illegal merchandise even though such search is not incident to an arrest. *Chambers v. Maroney,* 38 LW 4547, and cases cited therein.

So also invasions of privacy by searches of the person have been sustained as protective searches for weapons: *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct. 1868; *Peters v. New York* (No. 74), 88 S.Ct. 1889, 392 U.S. 40; and held invalid where neither the purpose nor scope of the search was protective: *Sibron v. New York* (No. 63), 88 S.Ct. 1889, 392 U.S. 40.

The same considerations of privacy also place some limitations on searches and seizures authorized by search warrants. For example, exploratory searches, even pursuant to valid search warrants, are prohibited. In *Stanley v. Georgia,* 394 U.S. 557, 89 S.Ct. 1243, 1251 (1969), the Court restated this rule:

> "The controlling constitutional principle was stated in two sentences by this Court more than 40 years ago:
>
> > '"The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant."' Marron v. United States, 275 U.S. 192, 196, 48 S.Ct. 74, 76, 72 L.Ed. 231."

Moreover, the description of things to be seized must not be so all inclusive as to constitute "general warrants". In *Stanford v. State of Texas,* 379 U.S. 476, 85 S.Ct. 506

(1965), where the officers seized some 2000 books, pamphlets and papers, the Court held (Pages 511-512):

> "In short, what this history indispensably teaches is that the constitutional requirement that warrants must particularly describe the '"things to be seized"' is to be accorded the most scrupulous exactitude when the '"things"' are books, and the basis for their seizure is the ideas which they contain. See Marcus v. Search Warrant, 367 U.S. 717, 81 S.Ct. 1708, 6 L.Ed. 2d 1127; A Quantity of Copies of Books v. Kansas, 378 U.S. 205, 84 S.Ct. 1723, 12 L.Ed. 2d 809. No less a standard could be faithful to First Amendment freedoms. The constitutional impossibility of leaving the protection of those freedoms to the whim of the officers charged with executing the warrant is dramatically underscored by what the officers saw fit to seize under the warrant in this case."

Up to this point we have reviewed cases, without reference to factual similarity, to test the reasonableness of the search and seizure in the case before us against the present day concept of "reasonableness". Turning now to more relevant cases we find that, under "today's" Fourth Amendment interpretation, the right to seize even contraband or illicit articles is not without restrictions. This was recognized by the majority opinion of the Court in *Warden, Maryland Penitentiary v. Hayden*, 387 U.S. 294, (87 S.Ct. 1642, at 1649), and even more explicitly by Justice Douglas in his dissent, as follows:

> "The right to seize contraband is not absolute. If the search leading to discovery of an illicit article is not incidental to lawful arrest or not authorized by a search warrant, the fact that contraband is discovered does not make the seizure constitutional. Trupiano v. United States, 334 U.S. 699, 68 S.Ct. 1228,

1232, 92 L.Ed. 1663; McDonald v. United States, 335 U.S. 451, 69 S.Ct. 191, 93 L.Ed. 153; Henry v. United States, 361 U.S. 98, 103, 80 S.Ct. 168, 171, 4 L.Ed. 2d 134; Beck v. State of Ohio, 379 U.S. 89, 85 S. Ct. 223, 13 L.Ed. 2d 142; Aquilar v. State of Texas, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed. 2d 723."

However, the reverse of that principle is also true. The cases involving facts similar and/or relevant to the issue before us all hold, without any exception of which we are aware, that where a search leading to the discovery of contraband or illicit articles is authorized by a search warrant, or is otherwise lawful (*e.g.*, because consented to or as incident to a lawful arrest), the seizure of the illicit articles and the use thereof as evidence is constitutional.

For example, in *Harris v. United States,* 331 U.S. 145, 67 S.Ct. 1098, 1103, (which *Chimel* overruled only as to the extent of the area permitted to be searched), the Court held:

> "If entry upon the premises be authorized and the search which follows be valid, there is nothing in the Fourth Amendment which inhibits the seizure by law-enforcement agents of government property the possession of which is a crime, even though the officers are not aware that such property is on the premises when the search is initiated."

This principle was approved by reference thereto in *Abel v. United States,* 362 U.S. 217, 80 S.Ct. 683, 697.

In *Stanley v. Georgia, supra,* the Court was careful to point out: (89 S.Ct. at 1251)

"This is not a case where agents in the course of a lawful search came upon contraband, criminal activity, or criminal evidence in plain view."

Warden v. Hayden, supra, in eliminating the "mere evidence" rule of *Gouled v. United States,* 255 U.S. 298, 41 S.Ct. 261, pointed out (87 S.Ct. at Page 1648) that at Common Law:

"Thus stolen property—the fruits of crime—was always subject to seizure. And the power to search for stolen property was gradually extended to cover ' "any property which the private citizen was not permitted to possess," ' which included instrumentalities of crime (because of the early notion that items used in crime were forfeited to the State) and contraband."

The Court then holds that the principal object of the Fourth Amendment is the protection of privacy rather than property and that:

"The requirements of the Fourth Amendment can secure the same protection of privacy whether the search is for 'mere evidence' or for fuits, instrumentalities or contraband. There must, of course, be a nexus—*automatically provided in the case of fruits, instrumentalities or contraband*—between the item to be seized and criminal behavior."

(Warden v. Hayden, *supra,* at Page 1650). (Emphasis supplied)

In *Frazier v. Cupp,* 394 U.S. 731, 89 S.Ct. 1420, 1425, the Supreme Court specifically enumerates the principle we are here discussing:

"The officers therefore found evidence against petitioner while in the course of an otherwise lawful search. Under this Court's past decisions, they were

> clearly permitted to seize it. Harris v. United States, 390 U.S. 234, 88 S.Ct. 992, 19 L.Ed. 2d 1067 (1968); Warden, Maryland Penitentiary, v. Hayden, 387 U.S. 294, 87 S.Ct. 1642, 18 L.Ed. 2d 782 (1967)."

The case last cited repeats the principle which, in our opinion, controls the case before us. In that case, the Court held a search of one Rawls' duffel bag lawful by reason of his consent and therefore upheld the seizure of clothing belonging to defendant which they found during the search.

In *United States v. Teller,* 397 F.2d 494 (1968), (Certiorari denied November 12, 1968, 89 S.Ct. 299), the officers had a search warrant for the dwelling and garage of the defendant. While the search was going on, defendant's wife came into the house and placed her handbag on the bed. One of the officers searched it and found heroin. On motion to suppress, the Court held:

> "However, we agree with the government's argument that, where entry upon the premises was authorized, nothing in the fourth amendment inhibits the seizure by law enforcement agents of contraband, the possession of which is a crime."
>
> " .....
>
> "Defendant's purse lying on the bed was merely another household item subject to the lawful execution of the search warrant which the federal agents held and were enforcing. See Walker v. United States, 117 U.S. App. D.C. 151, 327 F.2d 597 (1963), cert. denied 377 U.S. 956, 84 S.Ct. 1635, 12 L.Ed. 2d 500. The search of the purse was made pursuant to a search warrant for the premises and not as an incident to the defendant's arrest"

So too in this case we held on the motion to suppress and are still convinced that the search of the suitcases was authorized by the search warrant and, therefore, the seizure of the contraband (marijuana) found therein was constitutionally valid. The suitcases were mere two items of personal property among many on the premises authorized to be searched. The defendant's contention that the officers are not permitted to search, or must search at their own risk, unidentified property merely because, at the time of the search, such property is claimed by a third party would render a search warrant completely ineffective. Of what use is a search warrant if it cannot reach into and seize contraband in unmarked, open and/or unlocked suitcases, bags or containers merely because ownership is claimed by a guest, visitor or person other than the owner or occupant of the premises authorized to be searched? The possibilities for subterfuge if a search warrant is so restricted are endless. We do not believe that the Fourth or Fourteenth Amendments of the United States' Constitution or Article I, Section 8, of the Pennsylvania Constitution intended or require such a result.

Defense counsel has called our attention to the case of *United States v. Poole*, 307 F. Supp. 1185 (1969). In that case, the officers conducting a search of the apartment of one Dickson, allegedly with his consent, searched an overnight bag belonging to the defendant, Poole, in which they found an illegally possessed shotgun. The District Court suppressed the evidence holding (Page 1189):

> "The rule which emerges is that a defendant may object to a search consented to by another where the defendant has exclusive control over a part of the

> premises searched or over an "effect" on the premises which is itself capable of being (and is) "searched". "Enclosed spaces" over which a non-consenting party has a right to exclude others, whether rooms or effects, are protected. The reason for grounding the rule in proprietary rights is not entirely obvious. A search without a warrant presumptively violates the right of privacy of the victim."

We agree with the result reached in Poole even though we are not entirely in accord with its reasoning. At all events, it is easily distinguishable from the present case. Poole merely holds that a consent to search a place owned by A does not extend to personal effects owned by B without a search warrant. In such a case there is no intervention of a disinterested magistrate to determine whether probable cause to make *any* search exists. Therefore, the right of privacy under the "totality of circumstances" outweighs the duty of government to deter and solve crime and the scope of a search and seizure should be correspondingly restricted. On the other hand, where a valid search warrant to search A's place is secured and B claims ownership of unidentified personal effects, the right of privacy is far outweighed by the government's duty to prevent or solve crime.

As we pointed out on the motion to suppress, there may be cases in which personal property on premises belonging to another is so clearly identified, segregated and beyond the control of the owner or occupant that a search and seizure would constitute an unreasonable invasion of privacy which the owner of the seized property would be entitled to expect. This is not one of such cases.

We so hold and enter the following

Order

AND Now, this twenty-fourth day of August, 1970, defendant's Motion for a New Trial and in Arrest of Judgment is denied.

Exception is noted for the defendant.

BY ORDER OF THE COURT,

F. JOSEPH THOMAS (Signed),
Judge.

I CONCUR.

P. RICHARD THOMAS, (signed)
President Judge.

* * *

Sentence

IN THE
THE COURT OF COMMON PLEAS
OF CRAWFORD COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH,

VS.

PETER ERLING PLATOU.

No. 48 May Sessions, 1970.

Verdict of Guilty of Possession of Marijuana.

F. JOSEPH THOMAS, *J.*

AND Now, this 9th day of October, 1970, in view of the fact that this is the defendant's first offense and he is a resident of the city of New Orleans, Louisiana, and that a report of the Probation Department of that city and letters from prominent people indicate that he and his family are people of excellent reputation, the court is inclined to believe that he has an excellent chance of being rehabilitated without imprisonment and, therefore, imprisonment is suspended and the defendant, Peter Erling Platou, is placed on probation for a period of two (2) years upon the following probationary terms and conditions:

1. That he will obey the law and be of good behavior generally.

2. That he pay to the use of Crawford County the sum of five hundred ($500.00) dollars and the costs of prosecution.

3. That he will completely refrain from the use, possession, sale or distribution, or any other contact with marijuana, or any other narcotics or dangerous drugs, and will not remain in the presence of anyone who is using, consuming, possessing or distributing, or who has any contact with such narcotics or dangerous drugs as defined by the laws of the Commonwealth of Pennsylvania.

4. That, in view of the fact, that the defendant resides out of the state, the supervision of the probation of this defendant is requested of the Probation and Parole Department of the Department of Corrections, State of Louisiana and the Probation Officer of this county is ordered, authorized and directed to take the necessary steps to see that this defendant is supervised under interstate compact.

The defendant will stand committed until the money for the use of the county and the costs are paid.

BY ORDER OF THE COURT,

(signed) F. JOSEPH THOMAS,

.....

J.

Comm. Att'y: Paul D. Shafer, Jr., Esq.
Deft. Att'y: Gordon R. Miller, Esq.